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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/585,762	06/02/2000	Dirk Van Hyning	5019	5865

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EXAMINER

WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/585,762

Applicant(s)

HYNING, DIRK VAN

Examiner

Alexis Wachtel

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-22 and 24-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-22, 24-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Detailed Action

Response to Amendment

1. Applicant's amendment and accompanying Remarks filed 10-8-04 have been entered and carefully considered.

The amendment is insufficient to overcome the anticipation and obviousness rejections of claims 29-48.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 17-22,24-32 are rejected under 35 U.S.C. 102(a) as being anticipated by US 5,981,063 to Yokozeki et al.

With respect to claim 17, Yokozeki et al teach a treated substrate comprising:

a finish comprising a) solid compounds selected from the group consisting of metal particles, metal salts, metal oxides, and any combinations thereof (Col 2, lines 40-43);(Col 3, lines 1-13), and b) at least one binder material (Col 3, line 45), wherein said binder material, after processing and application to said substrate, is not readily water soluble, is not susceptible to attack by a standard laundering additive selected from the group consisting of detergents, solvents, bleaches, or mixtures thereof, and is not susceptible to degradation due to exposure to high temperatures associated with standard laundry drying temperatures', a substrate selected from the group consisting of

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a yarn, a fabric comprised of individual fibers, and a film, and having at least one surface thereof, wherein said finish is adhered to at least one portion of said surface of said substrate.

With respect to claim 17, although Yokozeki et al does not explicitly teach that at least one portion of said treated substrate retains at least 30% of said finish after 10 washes as performed in accordance with the wash procedure of MTCC Test Method 130-1981, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. a substrate coated with a metal ion generating compound and binder) and in the similar production steps (i.e. a substrate, a metal ion generating compound, and binder) used to produce the treated substrate. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594.

With respect to claim 18,24,27: wherein said substrate is an individual yarn (Col 3, line 45).

With respect to claim 19,25,28: wherein said substrate is a textile fabric (Col 1, line 60).

With respect to claim 20,26,29: wherein said finish comprises silver particles (Col 2, lines 40-43);(Col 3, lines 1-13).

With respect to claim 21 and 22: wherein said treatment is integrally retained in an amount of at least 30% after 20 washes.

With respect to claims 21 and 22, although Yokozeki et al does not explicitly teach that at least one portion of said treated substrate retains at least 30% of said

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finish after 20 washes, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. a substrate coated with a metal ion generating compound and binder) and in the similar production steps (i.e. a substrate, a metal ion generating compound, and binder) used to produce the treated substrate. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594.

With respect to claims 30-32, although Yokozeki et al does not explicitly teach that at least one portion of said treated substrate, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. a substrate coated with a metal ion generating compound and binder) and in the similar production steps (i.e. a substrate, a metal ion generating compound, and binder) used to produce the treated substrate. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594.

Arguments

4. Regarding the limitation "said at least one portion of said treated substrate retains at least about 30% of said finish after 10 washes as performed in accordance with the wash procedure of AATCC test method 130-1981", the Examiner has clearly provided a basis of inherency for the claimed property in section 3 of the instant action. In particular, the article made in accordance with the teachings of Yokozeki et al is made of the claimed materials and is made by a substantially similar production method and article of manufacture as disclosed by the Applicant of the instant application thereby providing an adequate and proper basis for inherency for the claimed

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properties. Applicant has failed to point out specific deficiencies with the examiner's reasoning. Accordingly, Applicant's arguments are found to be unpersuasive.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Wachtel whose telephone number is 571-272-1455. The examiner can normally be reached on 10:30am to 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glenn Caldarola, can be reached at (571)-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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